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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

MELVIN WILLIAMS,

Defendant and Appellant.

B300682

(Los Angeles County
Super. Ct. No. TA124662)

APPEAL from orders of the Superior Court of Los Angeles County. Laura R. Walton, Judge. Affirmed in part; dismissed in part.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Steven D. Matthews, Charles S. Lee and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant and appellant Melvin Williams appeals from the denial of his petition for resentencing pursuant to Penal Code section 1170.95 and from the denial of a separate postconviction motion to dismiss. We affirm the court's order denying the petition for resentencing and dismiss defendant's appeal of the motion to dismiss on the grounds it is not an appealable order.

In 2013, defendant was charged in a consolidated information with 10 felony counts, including two counts of attempted murder arising from assaults on defendant's former girlfriend and her brother while threatening them with a shotgun. Defendant was *not* charged with murder. After a jury trial in which defendant testified, defendant was found guilty of all charges and sentenced to an indeterminate term of 48 years to life, plus an eight-year determinate term.

This court affirmed defendant's conviction in *People v. Williams* (May 8, 2015, B252994) [nonpub. opn.].

On April 29, 2019, defendant filed a petition in propria persona requesting resentencing pursuant to Penal Code section 1170.95, a statutory provision that became effective January 1, 2019. Defendant's petition asserted he had been convicted of murder under a theory of felony murder or the natural and probable consequences doctrine and requested the appointment of counsel. In August 2019, defendant filed, in propria persona, a document designated as both "supplemental evidence" in support of the resentencing petition and a "motion to dismiss" for failure to disclose exculpatory evidence.

The trial court denied both the petition for resentencing and the motion to dismiss without appointing counsel for defendant, explaining that defendant did not qualify for

resentencing, and the documents presented as exhibits to his motion to dismiss were not exculpatory evidence.

Defendant contends the trial court erred in summarily denying his resentencing petition without appointing counsel because he presented a prima facie case for relief. Defendant argues the court's summary denial is at odds with the statutory language and legislative history and violates his constitutional rights. He further argues his due process rights were violated by the court's summary denial of his motion to dismiss without the appointment of counsel.

We disagree. "When we interpret statutes, giving effect to legislative purpose is the touchstone of our mission." (*People v. Valencia* (2017) 3 Cal.5th 347, 409.) "The text of the statute is integral to our understanding of the statute's purpose." (*Ibid.*) "We must take 'the language . . . as it was passed into law, and [we] must, if possible without doing violence to the language and spirit of the law, interpret it so as to harmonize and give effect to all its provisions.'" (*Id.* at pp. 409-410.)

Penal Code section 1170.95 was enacted as part of the legislative changes effected by Senate Bill 1437 (2017-2018 Reg. Sess.). "Senate Bill 1437 was enacted to 'amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.' (Stats. 2018, ch. 1015, § 1, subd. (f).)" (*People v. Martinez* (2019) 31 Cal.App.5th 719, 723.)

Penal Code section 1170.95, subdivision (c) provides, in plain language, that the court "shall review the petition and

determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section.” The statute thus contemplates an initial eligibility determination by the court. Allegations stated in a resentencing petition may be erroneous. Where, as here, there is no reasonable factual dispute the defendant is not eligible for relief, it would be a waste of judicial resources to automatically require the appointment of counsel and briefing.

Several courts have similarly interpreted the statutory language and have concluded that a defendant seeking resentencing is entitled to appointment of counsel *only after* demonstrating a prima facie case. (See, e.g., *People v. Tarkington* (2020) 49 Cal.App.5th 892, 899-900; *People v. Verdugo* (2020) 44 Cal.App.5th 320, 328-332, review granted Mar. 18, 2020, S260493; *People v. Cornelius* (2020) 44 Cal.App.5th 54, 58, review granted Mar. 18, 2020, S260410 & *People v. Lewis* (2020) 43 Cal.App.5th 1128, 1139-1140, review granted Mar. 18, 2020, S260598.) We adopt the persuasive analyses in these decisions.

Defendant did not present a prima facie case for relief and the court was therefore justified in issuing a summary denial without the appointment of counsel. Penal Code section 1170.95, subdivision (a) provides that *only* persons “convicted of felony murder or murder under a natural and probable consequences theory” may file a petition seeking resentencing. Defendant was not charged with or convicted of murder, despite his erroneous assertion otherwise in his petition. Rather, it is undisputed he was convicted of two counts of *attempted* murder which he perpetrated by himself (in addition to numerous other felonies).

At least three courts have rejected the argument that individuals convicted of attempted murder may seek relief under

Penal Code section 1170.95: *People v. Lopez* (2019) 38 Cal.App.5th 1087, review granted November 13, 2019, S258175; *People v. Muñoz* (2019) 39 Cal.App.5th 738, review granted November 26, 2019, S258234; and *People v. Dennis* (2020) 47 Cal.App.5th 838, 845-846. Pending guidance from our Supreme Court on this issue, we adopt the reasoning of *Lopez*, *Muñoz* and *Dennis* and conclude defendant was not entitled to sentencing relief pursuant to section 1170.95.

As for the court's order denying defendant's jointly titled "supplemental evidence" in support of resentencing and motion to dismiss, the denial was not an appealable order. "It is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute." (*People v. Mazurette* (2001) 24 Cal.4th 789, 792.) Penal Code section 1237 "establishes the general rule that a criminal defendant can appeal only from final judgments and those orders deemed by statute to be final judgments." (*People v. Mazurette*, at p. 792.)

Defendant argues the denial order affected his substantial rights and is therefore appealable pursuant to subdivision (b) of Penal Code section 1237. Defendant further argues that he should have been appointed counsel to pursue the motion before the court issued a summary denial.

We disagree. The "motion" purports to be supplemental evidence in support of defendant's request for resentencing and argues for reversal of the judgment of conviction and dismissal of all charges based on the exhibits attached to the motion. Defendant contends his conviction should be reversed because the prosecution failed to timely turn over evidence regarding the two victims of his crimes, including emails from his former

girlfriend expressing her desire not to testify against him and information her brother had been previously arrested for driving under the influence.

Defendant's motion is an improper attempt to collaterally attack the judgment of conviction. To the extent defendant believes he has bases upon which to collaterally challenge his conviction, the remedy of filing a writ of habeas corpus remains available to him. Defendant is not entitled to the appointment of counsel to pursue that remedy. (See, e.g., *Pennsylvania v. Finley* (1987) 481 U.S. 551, 555 ["right to appointed counsel extends to the first appeal of right, and no further"]; *In re Barnett* (2003) 31 Cal.4th 466, 475 [same]; cf. *In re Sanders* (1999) 21 Cal.4th 697, 717-718 [distinguishing California state practice of allowing appointment of counsel for capital defendants in habeas proceedings].) If defendant believes he has been denied any discovery necessary to pursue that remedy, he may file a motion seeking postconviction discovery pursuant to Penal Code section 1054.9, subdivision (a).

DISPOSITION

The order denying the petition for resentencing is affirmed. The appeal of the order denying the postconviction motion to dismiss is dismissed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.